

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 306 of 2004 (MS)

Moti Ram

..... Petitioner

Vs

Ist Additional District Judge & others

.....Respondents

Sri Sharad Sharma, Advocate for the petitioner
Standing Counsel for the respondent.

Dated: 23.4.2004

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for the issue of a writ of certiorari quashing the order dated 16.3.2004 and 22.4.2002 passed by the respondent no.1 and 2 respectively.

Briefly stated the facts giving rise to the present writ petition are that respondent no.3 filed a suit for permanent injunction against the petitioner in the Court of Civil Judge (JD) Haridwar which was registered as O.S. No. 405 of 1999. The contention of the plaintiff respondent no.3 is that he is a recorded tenure holder and in possession over Khata No. 359 khasra No. 1179/1 area 0.767 hectares, the defendants wanted to take illegal possession over the land of the plaintiff. Along with the suit the plaintiff also filed an application for

temporary injunction. The petitioner defendant filed objection against the application for temporary injunction. The trial Court allowed the application under Order 39 Rule 1 & 2 C.P.C. vide order dated 22.4.2002. Being aggrieved against the order the petitioners defendants have filed a revision under Order 43 Rule 1 ® which was also dismissed by the revisional court vide order dated 16.3.2004.

I have gone through the orders passed by the trial court as well as by the appellate Court. The order passed is based on the evidence on record and the learned Judge has considered the main ingredients for the grant of temporary injunction i.e. balance of convenience, irreparable loss and primary facie case. I find no reason to interfere under Article 226 of the Constitution of India in the concurrent orders passed by the trial court as well as by the appellate court.

However, the trial Court is directed to decide the suit within three months after the receipt of certified copy of this order.

Subject to the aforesaid observations the writ petition is dismissed.

(Rajesh Tandon J.)

Dated: 23.04.2004

*Dhyani